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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Alicia Klick,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-17-02018-PHX-GMS

ORDER

15 Pending before the Court is Claimant Alicia Jeanne Klick's appeal of the Social
16 Security Administration's (SSA) decision to deny disability insurance benefits and
17 supplemental security income. (Doc. 16). For the following reasons, the Court affirms the
18 denial of benefits.

19 **BACKGROUND**

20 Alicia Klick filed for disability benefits on April 2, 2013, alleging a disability
21 onset date of May 16, 2011. Ms. Klick's application for SSA disability benefits asserts
22 traumatic brain injury, chronic pain, and an eye and sleep diagnosis. (Tr. 125). Her claim
23 was denied on November 20, 2013; reconsideration was denied on June 16, 2014. (Tr.
24 170–78; 184–91). Ms. Klick requested a hearing from an administrative law judge (ALJ),
25 which was held on September 24, 2015. The ALJ determined that Ms. Klick had the
26 following severe impairments: traumatic brain injury and hearing impairment. (Tr. 21).
27 The ALJ found that Ms. Klick had the residual functional capacity (RFC) to perform a
28 full range of work at all exertional levels. But, the ALJ assessed multiple non-exertional

1 limitations, including: need for hearing aids, need to work in a quiet environment,
2 moderate limitations on the ability to remember and carry out detailed instructions,
3 moderate limitations on the ability to maintain attention and concentration, moderate
4 limitations on the ability to perform work at a consistent pace, moderate limitations on
5 the ability to interact with the general public and to get along with coworker, and other
6 similar limitations. (Tr. 24). The ALJ found that, even with these restrictions, Ms. Klick
7 could perform the work she had done in the past, namely working as a case manager or a
8 nanny. (Tr. 33). The ALJ also concluded that Ms. Klick could perform other work that
9 exists in significant numbers in the national economy. (Tr. 34). As such, the ALJ
10 determined that Ms. Klick was not disabled under the Social Security Act. *Id.* The
11 Appeals Council denied the request to review, making the Commissioner's decision final.
12 (Tr. 1-4). Ms. Klick now seeks judicial review of this decision pursuant to 42 U.S.C.
13 § 405(g).

14 DISCUSSION

15 I. Legal Standard

16 A reviewing federal court will address only the issues raised by the claimant in the
17 appeal from the ALJ's decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n. 13 (9th Cir.
18 2001). A federal court may set aside a denial of disability benefits when that denial is
19 either unsupported by substantial evidence or based on legal error. *Thomas v. Barnhart*,
20 278 F.3d 947, 954 (9th Cir. 2002). Substantial evidence is "more than a scintilla but less
21 than a preponderance." *Id.* (quotation omitted). It is "relevant evidence which,
22 considering the record as a whole, a reasonable person might accept as adequate to
23 support a conclusion." *Id.* (quotation omitted).

24 The ALJ is responsible for resolving conflicts in testimony, determining
25 credibility, and resolving ambiguities. *See Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
26 Cir. 1995). When evidence is "subject to more than one rational interpretation, [courts]
27 must defer to the ALJ's conclusion." *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
28 1190, 1198 (9th Cir. 2004). This is so because "[t]he [ALJ] and not the reviewing court

1 must resolve conflicts in evidence, and if the evidence can support either outcome, the
2 court may not substitute its judgment for that of the ALJ.” *Matney v. Sullivan*, 981, F.2d
3 1016, 1019 (9th Cir. 1992) (citations omitted).

4 **II. Analysis**

5 Claimant alleges that the ALJ erred by (1) discounting the examining
6 psychologist’s opinion and (2) rejecting the Claimant’s credibility and symptom
7 testimony.

8 **A. Evaluation of Medical Evidence**

9 Claimant states that “[a]s an initial matter, Klick disagrees with the ALJ’s
10 assignment of weight to *all* medical opinions in this case . . . [h]owever, in the interest of
11 streamlining Klick’s complex constellation of medical issues and assessments, Klick
12 focuses on the ALJ’s error with regard to examining psychologist Brent Geary, Ph.D.”
13 (Doc. 16, p. 17). Claimant did list all the providers’ whose opinions were discounted by
14 the ALJ while detailing the medical evidence in the case. (Doc. 16, pp. 11–12). But that
15 is not sufficient. Each of Claimant’s contentions “must be supported by specific reference
16 to the portion of the record relied upon and by citations to statutes, regulations, and cases
17 supporting [Claimant’s] position.” L.R. Civ. 16.1(a)(4). Each of the providers’ opinions
18 were different in nature, length, and character, and the ALJ evaluated each independently.
19 The Court and the Commissioner cannot do guesswork to determine how Claimant thinks
20 the ALJ erred in evaluating multiple providers’ opinions. *See Lewis*, 236 F.3d at 517 n.
21 13 (noting that courts will not address issues not raised by the Claimant on appeal).
22 Therefore, the Court finds that Claimant has waived her arguments as to all providers
23 who are not discussed with specificity.

24 Dr. Geary performed a consultative examination of Claimant on September 11,
25 2015. (Tr. 1417–27). Dr. Geary met with Claimant, observed her behavior, discussed her
26 routine and habits, and reviewed some past psychological evaluations. Dr. Geary also
27 administered a number of evaluations. Claimant scored a 30 out of 30 on the mini mental
28 status exam. (Tr. 1418). Claimant was found to have a full scale IQ of 85. (Tr. 1421).

1 Dr. Geary further opined that Claimant's score was "decreased significantly by the low
2 Working Memory and Processing Speed Indexes. . . . [and] [i]t appears likely that
3 Alicia's true intellectual abilities are represented by the Verbal Comprehension [96] and
4 Perceptual Reasoning [96] Indexes, both in the average range." *Id.* Dr. Geary also
5 assessed Claimant's memory, finding that she was "at the top of the low average range"
6 but that she had "significant weakness in long-term memorial functioning." *Id.* Claimant
7 scored a 26 out of 30 on the Logical Memory Recognition items, 34 out of 40 on the
8 Verbal Paired Associates Recognition, 5 out of 7 on Visual Reproduction Recognition,
9 and 20 out of 20 on Designs Recognition. (Tr. 1421–22). Dr. Geary stated that these
10 "values are well within normal limits." (Tr. 1422). On the Trail Making Test, Dr. Geary
11 noted that both of Claimant's "performances far exceed normal limits." *Id.* On the Rey
12 Test, Claimant's performance resulted in a "normal range finding." *Id.* Claimant did not
13 believe she was affected by depression. *Id.* And a personality inventory resulted in "a
14 valid profile" and Claimant "seemingly responded to inventory items in an open and
15 reasonable manner." *Id.* Dr. Geary then opined that Claimant meets the criteria for
16 Listing Impairments 12.02 and 12.06 and that the "psychological prognosis in this case is
17 poor." (Tr. 1423).

18 The ALJ gave Dr. Geary's opinion minimal weight. (Tr. 28). The ALJ noted that
19 Dr. Geary's opinion contained inconsistencies: many of the tests Dr. Geary administered
20 resulted in normal findings, but Dr. Geary also opined that Claimant met two Listing
21 Impairments. *Id.* The ALJ also noted that some of Dr. Geary's statements about
22 Claimant's disability were opinions on issues reserved to the Commissioner. *Id.* Claimant
23 asserts that the ALJ erred in assigning only minimal weight to Dr. Geary's report. First,
24 Claimant argues that the ALJ's finding that Dr. Geary's examination was largely normal
25 is contradicted by some of Dr. Geary's findings that Claimant had limitations.
26 Dr. Geary's report contained both findings of normal testing and some limitations.
27 Internal inconsistencies in physician's reports constitute relevant evidence, and the ALJ
28 has the responsibility to determine whether inconsistencies are material and are relevant.

1 *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999). The ALJ did
2 not err in evaluating the inconsistencies in Dr. Geary’s report and finding them relevant.
3 Second, the Claimant argues that the ALJ erred by failing to specify what objective
4 evidence he believed was inconsistent with Dr. Geary’s report. But, in evaluating
5 Dr. Geary’s report, the ALJ made specific reference to all of Dr. Geary’s findings that
6 Claimant fell within normal to average ranges. The ALJ discussed the lack of objective
7 evidence in Dr. Geary’s report.

8 Finally, Claimant objects to the ALJ’s dismissal of Dr. Geary’s opinion because
9 Dr. Geary commented on issues reserved to the Commissioner. The ALJ, however, never
10 stated that he rejected all of Dr. Geary’s findings because some statements throughout
11 were on issues reserved to the Commissioner. The ALJ did not err in rejecting
12 Dr. Geary’s opinions about Claimant’s disability and inability to work. 20 C.F.R.
13 § 404.1527(d)(1) (“We are responsible for making the determination or decision about
14 whether you meet the statutory definition of disability. . . . A statement that you are
15 ‘disabled’ or ‘unable to work’ does not mean that we will determine that you are
16 disabled.”).

17 Claimant further asserts that the ALJ erred by assigning great weight to the state
18 agency reviewer’s evaluations. (Tr. 82–101, 102–22, 125–44, 145–65). Claimant argues
19 that because the reviews were completed in 2014, and the ALJ’s hearing and opinion
20 were not until 2015–2016, the reviewer’s opinions were not relevant. Claimant does not
21 explain how this timing lessens the validity of the reviewer’s opinions of the medical
22 evidence in the record. Where “it is an *examining* physician’s opinion that the ALJ has
23 rejected in reliance on the testimony of a nonexamining advisor, reports of the
24 nonexamining advisor need not be discounted and may serve as substantial evidence
25 when they are supported by other evidence in the record and are consistent with it.”
26 *Andrews*, 53 F.3d at 1041. Claimant also states that the ALJ erred by not providing
27 citation to the record to support the conclusion that the reviewing doctors’ opinions are
28 consistent with the totality of the evidence. (Tr. 27). While Claimant is correct that the

1 ALJ does not provide a citation immediately after making such a statement, the ALJ's
2 whole opinion contains numerous citations to medical testing and evaluations throughout
3 the record. The ALJ discusses the lack of physical evidence in brain scans (Tr. 25), the
4 Claimant's normal psychological examinations (Tr. 26), and the Claimant's activities of
5 daily living (Tr. 22). Even if the ALJ did err, it was harmless because the ALJ had
6 extensively discussed such objective evidence in other parts of the opinion. *Lewis v.*
7 *Astrue*, 498 F.3d 909, 911 (9th Cir. 2007).

8 **B. Claimant's Credibility**

9 When a claimant alleges subjective symptoms, like pain, the ALJ must follow a
10 two-step analysis to decide whether to credit the claimant's testimony. First, the claimant
11 "must produce objective medical evidence of an underlying impairment which could
12 reasonably be expected to produce the pain or other symptoms alleged." *Smolen v.*
13 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996) (quoting *Bunnell v. Sullivan*, 947 F.2d 341,
14 344 (9th Cir. 1991)) (quotation marks omitted). The claimant does not need to show "that
15 her impairment could reasonably be expected to cause the severity of the symptom she
16 has alleged; she need only show that it could reasonably have caused some degree of the
17 symptom." *Smolen*, 80 F.3d at 1282. Second, if the claimant can make the showing
18 required in the first step and the ALJ does not find any evidence of malingering, "the ALJ
19 can reject the claimant's testimony about the severity of her symptoms only by offering
20 specific, clear and convincing reasons for doing so." *Id.* at 1281. The ALJ must
21 "specifically identify what testimony is credible and what testimony undermines the
22 claimant's complaints." *Morgan*, 169 F.3d at 599.

23 The ALJ found that Claimant's impairments could reasonably be expected to
24 cause her alleged symptoms and the ALJ did not find that Claimant was malingering.
25 But, the ALJ did determine that Claimant's statements about the intensity and persistence
26 of her symptoms were not entirely credible. (Tr. 25). The ALJ found that (1) the
27 Claimant's allegations of learning disabilities were not supported by medical records; (2)
28 the Claimant's allegations of chronic pain were not supported by medical records; (3)

1 there was no evidence of worsening of the Claimant's condition over the years since her
2 initial brain injury; (4) the Claimant's psychological examinations did not result in a
3 clinically significant or borderline evaluation; (5) the Claimant has failed to follow
4 through with treatment plans; (6) the Claimant had no auditory difficulties at the hearing;
5 and (7) the Claimant had a sporadic work history.

6 Initially, Claimant argues that the ALJ cannot discount the Claimant's credibility
7 regarding the severity of her symptoms by relying on a lack of objective medical
8 evidence. However, "[a]lthough lack of medical evidence cannot form the sole basis for
9 discounting pain testimony, it is a factor that the ALJ can consider in his credibility
10 analysis." *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005). Here, the ALJ did not
11 rely solely on a lack of medical evidence, but considered it with other factors. The ALJ
12 did not err in considering conflicts between the Claimant's testimony and the medical
13 record.

14 Next, Claimant objects to the medical evidence on which the ALJ relies to
15 discount her testimony. In discussing Claimant's complaints of chronic pain and
16 migraines, the ALJ noted that a physical examination had revealed normal sensations to
17 touch, pain, position, and vibration. (Tr. 25). Claimant argues that this one piece of
18 evidence is not particularly relevant to Claimant's stated symptoms. But, normal findings
19 on examinations related to pain are relevant, and it was just one piece of evidence
20 considered by the ALJ. Claimant also criticizes the ALJ's statement that there was no
21 worsening of the Claimant's symptoms between 1996 and 2012 (and Claimant's accident
22 occurred in 1998). *Id.* The ALJ relied on a mental health treatment history taken by a
23 provider in 2012. (Tr. 443). Claimant is correct that the record does not explicitly state
24 that there was no worsening of the Claimant's symptoms between 1996 and 2012. Yet,
25 ALJs may make findings "supported by inferences reasonably drawn from the record."
26 *Batson*, 359 F.3d at 1993. The mental health history referred to by the ALJ notes that
27 Claimant saw providers for outpatient counseling on and off, and primarily focused on
28 "family dynamics, self-awareness, and coping skills." (Tr. 443). As noted by the ALJ,

1 there is no discussion of emergent mental health difficulties or episodes of serious
2 concern. The ALJ could permissibly draw the conclusion that because the mental health
3 history contained no discussion of worsening conditions or serious episodes, none had in
4 fact occurred. The ALJ made a similar statement while discussing the Claimant's history
5 of mental impairments and testing, noting that the Claimant has shown some impairments
6 since the traumatic brain injury in 1998 but there have been no findings of the
7 impairment worsening in recent years such that the Claimant would now be disabled. (Tr.
8 26).

9 In 2012, a provider recounted the testing done on Claimant four months after her
10 traumatic brain injury. (Tr. 414). That testing revealed that Claimant had below average
11 cognitive functioning, impaired attention, lowered frustration tolerance, and an IQ of 88.
12 *Id.* Her more recent tests had assessed some memory difficulties and an IQ of 85. (Tr.
13 26). The ALJ compared the tests done in 1998 to the ones done in 2012, and determined
14 that the Claimant's functioning had not markedly changed or worsened. These
15 considerations are relevant because the primary injury to Claimant occurred in 1998, and
16 yet Claimant worked for periods after the accident and did not apply for disability until
17 2012. If Claimant's symptoms did not worsen over the years and Claimant was also able
18 to work over the years, then the ALJ could consider those facts in determining whether to
19 accept the Claimant's testimony regarding the extent of her symptoms and her assertion
20 that she was not presently able to work. Claimant also cites to some providers'
21 assessments that her impairments were now "severe" rather than "moderate." As detailed
22 by the ALJ, however, other testing revealed moderate impairments and average scores.
23 The ALJ is responsible for resolving such conflicts in the record.

24 Claimant asserts that the ALJ made contradictory statements in evaluating her
25 mental health testing. The ALJ noted that Claimant had over twenty clinical tests
26 administered and that most resulted in no significant clinical findings or borderline scale
27 evaluations. (Tr. 26). The ALJ also stated that testing revealed that Claimant had a
28 borderline evaluation on the schizoid and masochistic scale, and was in the borderline

1 range for immediate recall and long-term memory. *Id.* While these statements do appear
2 contradictory, they mirror the provider's statements. The provider stated that "the
3 patient's responses did not result in any clinically significant or borderline scale
4 elevations . . . [h]owever, she did exhibit a borderline elevation on the Schizoid [] scale
5 and the Masochistic (Self-Defeating) scale." (Tr. 1100). The ALJ is responsible for
6 evaluating the record and reconciling conflicts. The ALJ's contradictory statements
7 merely mirror the contradictory statements of the provider themselves. The ALJ went on
8 to consider multiple other clinical findings. The ALJ did not err.

9 Claimant argues that the ALJ erred in finding and considering that Claimant failed
10 to follow through with treatment plans. ALJs may consider and rely on "unexplained or
11 inadequately explained failure to seek treatment or to follow a prescribed course of
12 treatment." *Smolen*, 80 F.3d at 1284. The ALJ found that Claimant had not obtained
13 counseling since 2012 and that the record contained evidence of providers' unsuccessful
14 attempts to contact her to schedule services leading to eventual termination and discharge
15 from programs. (Tr. 26). Claimant objects that the ALJ was mistaken in stating that no
16 treatment had occurred since 2012. Claimant notes that she attended counseling from
17 May 2013 to July 2013 and October 2014 to January 2015. The record contains notes
18 from Dr. Sanford Silverman, a licensed psychologist, covering the period of May to July
19 2013. (Tr. 543–51). However, the handwritten notes are illegible, making it difficult for
20 the Court to evaluate what treatment occurred. And, the record also contains emails from
21 Claimant to Dr. Silverman cancelling appointments. (Tr. 551, 554). From October 2014
22 to January 2015, Claimant saw providers at Lifewell Behavioral. (Tr. 873–920). Claimant
23 did attend multiple sessions with providers there. But, the record also contains evidence
24 of providers having difficulty contacting Claimant and reporting that Claimant did not
25 attend scheduled sessions. (Tr. 888, 889, 900, 909). As cited in the ALJ's opinion, there
26 are other instances of Claimant failing to attend scheduled treatments. (Tr. 849, 930,
27 1347). Thus, although the ALJ was incorrect in stating that Claimant had no counseling
28 since 2012, the ALJ was not incorrect in finding that Claimant had been terminated from

1 multiple treatment programs. Even the evidence Claimant cites to support her attending
2 counseling contains significant instances of cancelling treatments. Any error made by the
3 ALJ in using the incorrect date of 2012 is therefore harmless. *Burch*, 400 F.3d at 679 (“A
4 decision of the ALJ will not be reversed for errors that are harmless.”). Claimant also
5 objects that the ALJ failed to inquire as to the reason for the missed appointments and
6 gaps in treatment. The burden of proving disability rests with Claimant. *Bustamante v.*
7 *Massanari*, 262 F.3d 949, 954 (9th Cir. 2001) (“The claimant has the burden of proof for
8 steps one through four.”). The ALJ held a fair hearing, and Claimant did not present
9 evidence or testimony to explain her gaps in treatment.

10 Finally, Claimant objects to the ALJ’s consideration of her sporadic work history.
11 The ALJ stated that Claimant “worked only sporadically prior to the alleged disability
12 onset date, which raises a question as to whether the claimant’s continuing
13 unemployment is actually due to medical impairments.” (Tr. 27). Claimant argues that an
14 ALJ may only consider inconsistent work records in conjunction with other factors that
15 discredit a claimant’s credibility. But, the ALJ did discuss multiple other reasons for
16 discounting Claimant’s credibility, and the ALJ was permitted to consider the Claimant’s
17 work history as one of those factors. *Thomas*, 278 F.3d at 959 (considering a claimant’s
18 “extremely poor work history,” “little propensity to work in her lifetime,” and “spotty
19 [work history], at best, with years of unemployment between jobs” in evaluating the
20 claimant’s credibility). The ALJ provided clear and convincing reasons for rejecting
21 Claimant’s pain testimony and there is substantial evidence to support his determination.

22 CONCLUSION

23 The ALJ did not err by discounting the consultative examiner’s opinion. The ALJ
24 properly considered the internal inconsistencies in the report. The ALJ did not err by
25 discounting the Claimant’s testimony. The ALJ evaluated the Claimant’s medical
26 evidence, along with her inconsistent treatment history and work history.

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